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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,330	02/26/2004	Ole Eichhorn		3978
27189	7590	11/08/2004	EXAMINER	
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101			GARCIA, GABRIEL I	
			ART UNIT	PAPER NUMBER
			2624	

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/787,330	EICHHORN ET AL.
	Examiner	Art Unit
	Gabriel I Garcia	2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-22 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restriction***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CAR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-11 and 21-22, drawn to a system for processing a digital image by using an image processing algorithm, classified in class 358, subclass 1.5.

Group II, claim(s) 12, drawn to a method for creating an image processing algorithm, classified in class 358, subclass 1.9.

Group III, claim(s) 13-15, drawn to a method for remote execution of an image processing algorithm, classified in class 358, subclass 1.15.

Group IV, claim(s) 16-20, drawn to a method for processing a digital image by parsing the information to obtain a destination module, classified in class 358, subclass 1.13.

2. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: .

3. A telephone call was made to Applicant's representative on 10/2/04 to request an oral election to the above restriction requirement, but did not result in an election being made. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CAR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CAR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CAR 1.48(b) and by the fee required under 37 CAR 1.17(I).

5. The inventions are distinct, each from the other because of the following reasons: Inventions I-IV are related as combination , subcombinations disclosed as usable together in a single combination, the single combination being a method or system for processing a digital image. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as the processing of the digital data using an algorithm to execute the image processing, invention II has separate utility such the creation of an algorithm by using different parameters to create the image processing algorithm, invention III has separate utility such the remote execution of an image processing algorithm through a network, and invention IV has separate utility such the parsing of digital data by using a destination module having identification and authentication information. See MPEP § 806.05(d) .

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Also because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group, restriction for

examination purposes as indicated is proper. Should applicant traverse on the ground that the two or more groups are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the two groups to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Gabriel I. Garcia** whose telephone number is (703) 305-8751. The Examiner can be reached from Monday through Thursday, from 7:30 am to 6:00 pm. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 306-0377

Gabriel I. Garcia
Primary Examiner
November 8, 2004

GABRIEL GARCIA
PRIMARY EXAMINER

